IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 27TH SEPTEMBER 2006 / 5TH ASWINA 1928

Crl.Rev.Pet.No. 3394 of 2006()

CRA.230/2005 of ADDL. SESSIONS COURT, THRISSUR
CC.1/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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REVN. PETITIONER:

SATHYAN AYYAPPA SATHYAN,
S/O. VELAYUDHAN, KARIAZHTH HOUSE,
PERINJANAM VILLAGE,
KODUNGALLOOR.

BY ADV. SRI.RAJIV NAMBISAN

RESPONDENTS:

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1. YOUSU, S/O. AMMUKUNJU,
MATJILATHA VEETTILE,
KAIPAMANGALAM VILLAGE,]
KODUNGALLOOR.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.V.M.KRISHNAKUMAR
PUBLIC PROSECUTOR SRI. SAI GEORGE.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 27/09/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.R.P.NO. 3394 OF 2006

Dated this the 27th day of September, 2006

ORDER

Does the criminal court have the power to direct payment of interest on the amount of compensation directed to be paid under Sec.357(3) of the Cr.P.C? This interesting question arises for consideration in this revision petition which is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution under Section 138 of the N.I Act.

2. The cheque is for an amount of Rs.25,000/- and bears the date 01.11.2004. Signature in the cheque is admitted. Notice of demand succeeded in evoking only Ext.D1 reply notice. No payment was made. The complainant examined himself as PW1 and proved Exts.P1 to P5. The accused did not adduce any oral evidence. He proved Exts.D1 & D2. The accused raised a plea that the cheque was not issued for the due discharge of any legally enforceable debt/liability; but was issued only as security in a transaction between the wife of the accused and the complainant.

3. The courts below concurrently came to the conclusion

that the complainant has succeeded in establishing all ingredients of the offence punishable under Section 138 of the N.I Act. Accordingly they proceeded to pass the impugned concurrent judgments. The petitioner faces the sentence of imprisonment till rising of court. There is a further direction under Sec.357(3) of the Cr.P.C. to pay an amount of Rs.25,000/- along with interest at the rate of 12% per annum from 1/11/04 – the date of the cheque.

4. Called upon to explain the nature of challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned counsel for the petitioner does not strain to assail the verdict of guilty and conviction. I am satisfied that the stand taken by the learned counsel for the petitioner is an informed and fair one. I find the verdict of guilty and conviction to be absolutely justified and unexceptionable.

5. The learned counsel for the petitioner raises two contentions. Firstly, it is contended that the sentence imposed is excessive. Secondly, it is contended that powers under Section 357(3) Cr.P.C does not justify a direction to recover interest on the principal amount of compensation. The counsel contends that the power of the court under Section 357(3) Cr.P.C is only to

direct payment of a specific amount and there can be no direction for payment on any interest on such specific amount directed to be paid.

6. I find merit in the prayer for leniency. I have already adverted to the principles governing imposition of sentence in a prosecution under Sec.138 of the N.I. Act in the decision reported in Anilkumar v. Shammy (2002 (3) K.L.T. 852). I am not satisfied that there are any compelling circumstances available in this case which would justify the imposition of any deterrent substantive sentence of imprisonment on the petitioner. Leniency can be shown on the question of sentence. But at the same time the courts cannot ignore the plight of the respondent/complainant who has been compelled to fight three rounds of legal battle and to wait from 2004 for the redressal of his genuine grievance.

7. The interesting legal question that has been raised is whether a direction can be issued under Sec.357(3) of the Cr.P.C. to pay as compensation interest on the amount shown in the cheque. The courts below have directed payment of the principal amount due under the cheque i.e., Rs.25,000/- along with interest at the rate of 12% per annum from 1/11/04 till the

date of realisation. The learned counsel for the petitioner contends that such a direction is legally impermissible and unacceptable.

8. The question raised is interesting. The learned counsel were requested to research and make detailed submissions. I place on record my appreciation of the assistance rendered by Mr.V.N. Shankerjee, the young counsel who was requested to assist this Court as amicus curiae.

9. The first question raised is whether all amounts which can be directed to be paid as compensation out of the fine amount under Sec.357(1) of the Cr.P.C. can be directed to be paid under Sec.357(3) of the Cr.P.C. also. I extract Sec.357(1) of the Cr.P.C. below:

> "357. **Order to pay compensation.--** (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied--
>
> (a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death.

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust or cheating, or of having dishonestly received or retained, or of having voluntarily assisted the in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto."

Sec.357(1) of the Cr.P.C. speaks of imposition of fine and a direction to pay compensation out of such fine imposed. Clauses (a) to (d) of Sec.357(1) show that the fine amount can be applied to the various purposes enumerated in those Clauses (a) to (d).

10. We now come to Sec.357(3) of the Cr.P.C. which I extract below:

> "357. **Order to pay compensation.--** (1)
>
> **x x x x x x x**
>
> **x x x x x x x**
>
> (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."
>
> (emphasis supplied)

When it comes to Sec.357(3) of the Cr.P.C., the court is invested with powers to direct the accused person to pay, by way of

compensation, such amount as may be specified to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. Though Sec.357(3) of the Cr.P.C. does not repeat the heads under which the amounts can be directed to be paid as compensation, the conclusion appears to me to be inevitable that all such payments which are contemplated under Clauses (a) to (d) of Sec.357(1) of the Cr.P.C. can also be directed to be paid when it comes to issue of a direction under Sec.357(3) of the Cr.P.C. Clauses (a) to (d) deal with various losses which may be suffered by a victim of the claim and the general words employed in Sec.357(3) must certainly take in all the amounts which are enumerated as payable under Clauses (a) to (d) of Sec.357(1) of the Cr.P.C.

11. The counsel point out, and I am in agreement with them, that the observations in para-33 of the decision of the Supreme Court in **Arun Garg v. State of Punjab** ((2004) 8 SCC 251) is authority for the proposition, that only such amounts can be directed to be paid which a civil court is competent to direct payment. The language of Sec.357(1) and (3) read along with Sec.357(5) of the Cr.P.C. must make the position very clear. Unless the amount is claimable in a civil suit, a direction under

Sec.357(1) or Sec.357(3) of the Cr.P.C. for payment of compensation cannot be issued.

12. It is next suggested that payment of any uncertain amount cannot be directed. Direction to pay interest without specifying the precise quantum cannot be held to be an amount specified and hence it cannot fall within Sec.357(3) of the Cr.P.C. I have considered this contention. The expression "such amount as may be specified" appearing in Sec.357(3) of the Cr.P.C. cannot certainly suggest or convey that direction for payment of interest at the specified rate on a specified amount will cease to be an amount "as may be specified" for the purpose of Sec.357(3) of the Cr.P.C. That would continue to be an amount specified, though the amount payable as such in figures is not specified and only the basis on which such amount is to be ascertained is specified. There is no uncertainty whatsoever in the impugned direction. The amount due on any given date can be ascertained specifically. Therefore the said expression "such amount as may be specified" appearing in Sec.357(3) of the Cr.P.C. cannot lead the court to the conclusion that a direction to pay interest is impermissible.

13. A contention is raised that in order to be payable under

Sec.357(3) of the Cr.P.C. the recipient must have either suffered loss or injury by reason of the act for which the accused person has been so sentenced. The counsel builds up an argument that where an offence under Sec.138 of the N.I. Act is committed, the payee or the holder in due course cannot be said to have suffered any loss or injury by reason of the act for which the accused person has been sentenced. I find this contention to be unacceptable. When the cheque is dishonoured on the ground of insufficiency of funds etc., and payment is not made despite service of notice of demand, as insisted by Sec.138 of the N.I. Act, certainly the payee or the holder in due course suffers loss by reason of the act for which the accused person has been sentenced. He has not obtained payment which he is in law entitled to on account of the culpable conduct of the accused. He is hence entitled for compensation. As has already been noted, the precise offence under Sec.138 of the N.I. as embodied in the body of Sec.138 of the N.I. Act is committed when the cheque is “returned by the bank unpaid”. The proviso only enumerates the pre-conditions for a valid prosecution. But the precise offence is stipulated in the body of Sec.138 of the N.I. Act which is nothing but dishonour of the cheque.

14. When dishonour of the cheque takes place, certainly the holder is entitled to be compensated. This is crystal clear from Sec.30 of the N.I. Act which reads as follows:

> "30. **Liability of drawer.--** The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided."

In the event of dishonour by the drawee, the holder (payee, his order or bearer) is certainly entitled to be compensated by the drawer of the cheque. "Payee" includes the holder and the compensation payable in case of dishonour of a promissory note, bill of exchange or cheque must be computed as per the rules in Sec.117 of the Act.

15. This Court had occasion earlier in **Anilkumar v. Shammy** (2002 (3) KLT 852) to consider the same question. The question was answered in para-14 in the following words:

> "14. The contention that Sec.357(3) of the Criminal Procedure Code permits payment of "compensation" only and that the amount due under the cheque cannot

> be reckoned as compensation for the purpose of S.357(3) does not also appeal to me at all. According to me the expression "compensation" is used under S.357(3) not in any technical sense, and must certainly include payment due to the victim under the cheque in respect of which the offence under S.138 of the Negotiable Instruments Act is committed. It is unnecessary, considering the purpose which S.357(3) has to serve, to import any special or technical meaning to the expression "compensation" used there."

16. In that case the play of Secs. 30 and 117 of the N.I. Act was omitted to be considered. I extract Sec.117 of the N.I. Act below:

> "117. **Rules as to compensation**.-- The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall be determined by the following rules:-
>
> (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in

presenting, noting and protesting it;

(b) x x x x x x x x x x x x x ;

(c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at eighteen per centum per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

(d) x x x x x x x x x x x x ;

(e) x x x x x x x x x x x x. ”

(emphasis supplied)

((b), (d) and (e) omitted as not particularly relevant in the context)

The relevant clauses are: Secs.117(a) and 117(c). Sec.117(c) of the N.I. Act is not applicable to a drawer and it is applicable only to an indorser. Sec.117(a) of the N.I. Act stipulates that the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it. The crucial question is whether interest can be said to be “the amount due upon the instrument”. It will be proper straightaway to refer to Sec.80 of the N.I. Act which

deals with payment of interest when no rate of interest is specified. I extract Sec.80 of the N.I. Act below:

> "**80. Interest when no rate specified.--** When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought have been paid by the party charged, until tender or realisation of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs."

17. Sec.80 of the N.I. Act is applicable to all instruments. There is no definition for the expression "instrument" in the N.I. Act. But the expression "negotiable instrument" is defined in Sec.13 of the N.I. Act. The "instrument" referred to in Sec.80 of the N.I. Act must necessarily refer to "negotiable instruments" which by definition means a promissory note, bill of exchange or cheque payable either to order or to bearer. The cheque is hence a negotiable instrument and consequently an instrument to

which Sec.80 of the N.I. Act would apply.

18. How is the expression “amount due upon the instrument” to be construed? No specific precedent on this aspect is shown. But the commentaries reveal that the amount due upon the instrument must include the interest payable under Secs.79 and 80 of the N.I. Act. Bhashyam and Adiga's “The Negotiable Instruments Act” in the 17th Edition at page 629 speaks thus on the question:

> “The amount due on the instrument is not merely the principal sum mentioned thereon, but also includes interest as calculated according to the rules in Sections 79 and 80, ante. It would have been better, if the section mentioned interest specifically, when interest is reserved that rate is payable. - Cf Bills of Exchange Act, section 57(1)(B); Re Gillespie (1886) 18 QBD 286: 56 LT 599.)”

I am in complete agreement with this proposition. The expression 'amount due upon the instrument' cannot be read down to mean 'the amount shown as payable in the instrument'. Going by the context, purpose, purport and the language of the provision such reading down is impermissible. It must be given a

reasonable and purposive interpretation to include the interest payable also.

19. It will be apposite in this context to ascertain the very concept of interest in law. In Halsbury's Laws of England "interest" is stated to be the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In Corpus Juris Secundum "interest" is stated to be the compensation allowed by law; fixed by the parties, for the use or forbearance of money, or as damages for its detention; compensation paid for the use of money and payment of a reasonable sum for the loss of use of money. "Interest" has also been defined as the rental price of money; a measure of compensation to which an obligee is entitled; the natural growth or incident of money etc. It is an accretion to or an increment to the principal fund earning it, it is further observed. A Division Bench of this Court in **George v. Daniel** (1993 (2) KLT 77) has observed in para-6 that:

> "Thus interest is the compensation for the use or delay in the payment of money belonging to another person. Interest may be awarded when there is an agreement for the payment of interest or when interest is

> payable by the usage of trade or under the provisions of any substantive law, as for instance under S.80 of the Negotiable Instruments Act."
>
> (emphasis supplied)

The conclusion is thus inevitable from fundamental concepts that interest is nothing but compensation payable for amounts retained unjustifiably without payment. In that view of the matter also interest is compensation and direction can be issued under Sec.357(3) of the Cr.P.C. for payment of interest.

20. It therefore follows that under Sec.117(a) of the N.I. Act the amount due upon the instrument would include the amount payable under Sec.80 of the N.I. Act. We have precedents in **Joseph v. Chandran** (1989 (2) KLT 414) and **K.A. Lona v. Dada Haji Ibrahim Hilari & Co.** (AIR 1981 Kerala 86) which lay down specifically that Sec.80 of the N.I. Act is applicable to bills of exchange and promissory notes. The decision in **P. Mohan v. Basavaraju** (AIR 2003 Karnataka 213) refers to the liability under Sec.80 to pay interest on the amount due under a cheque. As already adverted to, the "instrument"

means negotiable instrument which includes a cheque. Therefore there can be no doubt on the proposition that Sec.80 is applicable to cheques as well. The simple fact that other sections in that Chapter – Secs.78, 79 and 81 of the N.I. Act are differently worded is no reason to conclude that Sec.80 is not applicable to cheques. Sec.78 specifically refers to all negotiable instruments – promissory note, bills of exchange or cheque. Sec.79 deals with promissory note or bill of exchange. Sec.78 deals with instruments in general and Sec.81 again refers to promissory note, bill of exchange or cheque i.e., all instruments. The mere fact that Sec.80 has employed the expression "instrument" cannot, in these circumstances, lead the court to the conclusion that the liability to pay interest under Sec.80 of the N.I. Act will not cover a cheque.

21. We now come to the next question - as to the rate at which such interest can be directed to be paid. Merely because interest at the rate of 18% per annum can be claimed under Sec.80, it is not essential that a court much less a criminal court which need only ensure just compensation should direct payment at that rate. When the matter goes to a civil court, for the pre-litigation period, interest at the rate specified in Sec.80

may be payable. But that does not necessarily oblige the criminal court to direct payment of interest at the full rate of interest mentioned in Sec.80. The court can ascertain the loss which the complainant would suffer/has suffered on account of the delay in payment and appropriate rate of interest can be directed to be paid, conscious of the stipulation under Sec.80. Consistent with the rate of interest payable by the nationalised banks, I am satisfied that a direction for payment of interest at the rate of 8% per annum shall serve the ends of justice eminently.

22. I am of opinion that such direction for payment of interest would serve the interests of justice certainly. This Court does now deal with the revision petitions filed as early as in 1996. Directions for payment of lump sum amount as compensation without any direction for payment of interest does work out injustice and amount to a premium for the defaulters who succeed in their attempts to drag on the proceedings. The direction to pay interest at a reasonable rate on the principal amount due under the cheque, I am satisfied, shall eminently cater to the needs of justice.

23. In the result:

(a) This revision petition is allowed in part.

(b) The verdict of guilty, conviction and sentence imposed on the petitioner under Sec.138 of the N.I. Act are upheld.

(c) But the direction to pay compensation is modified and it is directed that the petitioner shall pay the amount of Rs.25,000/- along with interest at the rate of 8% per annum from 1/11/04 to the date of payment. In default of payment, the petitioner shall undergo simple imprisonment for a period of two months.

24. The petitioner shall have time till 30/11/2006 to pay the amount and avoid the default sentence. The petitioner shall appear before the learned Magistrate on or before 30/11/2006 to serve the modified sentence hereby imposed. Till then, the sentence shall not be executed.

(R. BASANT, JUDGE)

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